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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,839	07/07/2000	Michael L. Emens	AM9-1999-0218	6929
23334	7590	08/14/2003		
FLEIT, KAIN, GIBBONS, GUTMAN & BONGINI, P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			EXAMINER BURGESS, BARBARA N	
			ART UNIT 2157	PAPER NUMBER
			DATE MAILED: 08/14/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/611,839	EMENS ET AL.
	Examiner Barbara N Burgess	Art Unit 2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2000.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                           | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . | 6) <input type="checkbox"/> Other: _____ .                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Phaal.

As per claims 1, 11, Phaal discloses a method for scheduling a download from a server computer to a client computer comprising steps of:

- Obtaining a first threshold time value (column 6, lines 34-49);
- Obtaining a second threshold time value (column 6, lines 34-49);
- Determining a time for performing a download between the first threshold time value and the second threshold time value (column 6, lines 34-49, 56-67).

As per claims 2, 12, Phaal discloses a method according to claim 1, wherein the step of determining a time comprises a sub-step of:

- Selecting a random time between the first threshold time value and the second threshold time value (column 6, lines 34-49, 56-67, column 7, lines 1-5).

As per claims 3, 13, Phaal discloses a method according to claim 2, wherein said sub-step of selecting a random time comprises sub-steps of:

- Selecting a random number (column 6, lines 34-49, 56-67, column 7, lines 1-5);
- Selecting a random time between the first threshold time value and the second threshold time value, based on the random number, the first threshold time value and the second threshold time value (column 6, lines 34-49, 56-67, column 7, lines 1-5).

As per claims 4, 14, Phaal further discloses a method according to claim 1, wherein said step of determining a time comprises sub-steps of:

- Obtaining one or measures of resource availability (column 6, lines 45-49, 61-67, column 7, lines 1-5);
- Comparing the one or more measures to one or more corresponding preselected limits (column 6, lines 34-49, 56-67, column 7, lines 1-5).

As per claims 5, 15, Phaal discloses a method according to claim 4, wherein said step of obtaining one or more measures comprises a sub-step of:

- Obtaining a measure of ping response time between the client and the server (column 7, lines 1-15).

As per claims 6, 16, Phaal further discloses a method according to claim 4, wherein said step of obtaining one or more measures comprises a sub-step of:

- Obtaining a measure of client computer percentage of CPU utilization (column 7, lines 1-15).

As per claims 7, 17, Phaal discloses a method according to claim 4, wherein said step of obtaining one or more measures comprises a sub-step of:

- Obtaining a count of the number of downloads currently being performed by the client (column 5, lines 50-58).

As per claims 8, 18, Phaal discloses a method according to claim 1, wherein the step of determining a time for performing a download comprises sub-steps of:

- Obtaining a plurality of measures of resource availability selected from a group consisting of measures of client computer resource availability and measures of communication resource availability (column 6, lines 45-49, 61-67, column 7, lines 1-5, column 9, lines 55-60);
- Obtaining a set of weights corresponding to the plurality of measures of resource availability (column 9, lines 55-60, column 12, lines 5-25);
- Calculating a weighted sum of the plurality of measures of resource availability using the set of corresponding weights (column 12, lines 5-25);
- Comparing the weighted sum to a limit value (column 12, lines 5-45).

As per claims 9, 19, Phaal discloses a method for scheduling a download from a server computer to a client computer comprising steps of:

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- Checking a percentage of CPU utilization (column 7, lines 1-15);
- Checking a ping response time between the client and the server (column 7, lines 1-15).
- Obtaining a count of a number of downloads currently underway (column 5, lines 50-58).

As per claims 10, 20, Phaal discloses a method according to claim 9, further comprising a step of:

- Obtaining a weight corresponding to the percentage of CPU utilization (column 7, lines 1-15);
- Obtaining a weight corresponding to the ping response time (column 7, lines 1-15);
- Obtaining a weight corresponding to the count of the number of downloads currently underway (column 5, lines 50-58);
- Calculating a weighted sum of the percentage of CPU utilization, the ping response time, and the count of the number of downloads currently underway, using the weight corresponding to the percentage of CPU utilization, the weight corresponding to the ping response time, and the weight corresponding to the count of the number of downloads currently underway (column 12, lines 5-25);
- Comparing the weighted sum to a limit value (column 12, lines 5-45).

As per claim 21, Phaal further discloses information processing system comprising:

- A network interface (column 6, lines 34-49);

- A download scheduling intelligent agent for accepting specification from a user of a period during which a download is to be performed, and determining a time within the period for performing the download (column 6, lines 34-49).

***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,134,584

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara N Burgess whose telephone number is (703) 305-3366. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Ettinene can be reached on (703) 308-7562. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Barbara N Burgess  
Examiner  
Art Unit 2157

  
MOUSTAFA M. MEKY  
PRIMARY EXAMINER